



## DEPARTMENT OF COMMERCE

### INTERNATIONAL TRADE ADMINISTRATION

A-580-870

Certain Oil Country Tubular Goods from the Republic of Korea: Notice of Court Decision Not in Harmony with the Results of Antidumping Duty Administrative Review; Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On August 29, 2022, the U.S. Court of International Trade (the Court or CIT) issued its final judgment in *SeAH Steel Corporation v. United States*, Consol. Court No. 20-00150, Slip Op. 22-101, sustaining the U.S. Department of Commerce's (Commerce) remand results pertaining to the administrative review of the antidumping duty (AD) order on certain oil country tubular goods (OCTG) from the Republic of Korea (Korea) covering the period September 1, 2017, through August 31, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's *Final Results* of the administrative review, and that Commerce is amending the *Final Results* with respect to the dumping margin assigned to SeAH Steel Corporation (SeAH).

DATES: Applicable September 8, 2022.

FOR FURTHER INFORMATION CONTACT: Frank Schmitt or Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4880 or (202) 482-6312, respectively.

## SUPPLEMENTARY INFORMATION:

### Background

On July 13, 2020, Commerce published its *Final Results* in the 2017-2018 AD administrative review of OCTG from Korea.<sup>1</sup> In this administrative review, Commerce selected two mandatory respondents for individual examination: Hyundai Steel Company (Hyundai Steel) and SeAH. Commerce calculated weighted-average dumping margins of 0.00 percent for Hyundai Steel, 3.96 percent for SeAH, and 3.96 percent for the non-examined companies in the *Final Results*.<sup>2</sup> SeAH challenged the *Final Results* on multiple grounds.<sup>3</sup>

In its *Remand Order*, the Court sustained Commerce's determination with respect to two issues: (1) the calculation of profit as included in SeAH's constructed export price;<sup>4</sup> and (2) the exclusion of freight revenue in calculating SeAH's constructed export price.<sup>5</sup> However, the Court remanded two of Commerce's determinations:

1. Particular market situation (PMS), finding that substantial record evidence does not support Commerce's cumulative determination that a PMS existed in Korea for the 2017-2018 period of review (POR), thus, the issue required further consideration or explanation.<sup>6</sup>
2. The application of Cohen's *d* test, as part of the differential pricing analysis, for further explanation of whether potential limits on the applicability of the Cohen's *d* test as enumerated in *Stupp*<sup>7</sup> were satisfied or whether those limits need not be observed when Commerce uses the Cohen's *d* test.<sup>8</sup>

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<sup>1</sup> See *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 41949 (July 13, 2020) (*Final Results*), and accompanying Issues and Decision Memorandum.

<sup>2</sup> *Id.*

<sup>3</sup> See generally *SeAH Steel Corp. v. United States*, 539 F. Supp. 3d 1341 (CIT 2022) (*Remand Order*).

<sup>4</sup> *Id.*, 539 F. Supp. 3d at 1366.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> See *Stupp v. United States*, 5 F.4<sup>th</sup> 1341 (Fed. Cir. 2021) (*Stupp*).

<sup>8</sup> See *Remand Order*, 539 F. Supp. 3d at 1351 and 1366.

In its final results of redetermination pursuant to the *Remand Order* issued on July 16, 2021, Commerce reconsidered the two determinations listed above.<sup>9</sup> In the *Redetermination*, Commerce:

1. Reversed the PMS finding and removed the adjustment from the margin calculations for SeAH.
2. Determined that it was not necessary to address the issue of applicability of the Cohen's *d* test because, having reversed the PMS finding, the weighted-average dumping margin is either zero or *de minimis* regardless of which comparison method is used, thus rendering the differential pricing analysis moot.

As a result, Commerce recalculated the weighted-average dumping margin for SeAH, which changed from 3.96 percent to 0.00 percent.<sup>10</sup>

On August 29, 2022, the CIT issued its final judgment in *SeAH Steel Corporation v. United States*, Consol. Court No. 20-00150, Slip Op. 22-101, fully sustaining Commerce's *Redetermination*:<sup>11</sup>

(1) The CIT sustained Commerce's *Redetermination* with respect to the PMS determination and adjustment.<sup>12</sup>

(2) The CIT sustained Commerce's *Redetermination* with respect to not applying the differential pricing analysis to calculate SeAH's dumping margin because SeAH's dumping margin is either zero or *de minimis*, regardless of which comparison method is used.<sup>13</sup>

#### Timken Notice

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<sup>9</sup> See *Final Results of Redetermination Pursuant to Court Remand, SeAH Steel Corp. v. United States*, Consolidated Court No. 20-00150, Slip. Op. 21-146 (CIT October 19, 2021), dated January 24, 2022 (*Redetermination*).

<sup>10</sup> *Id.*

<sup>11</sup> See *SeAH Steel Corporation v. United States*, Consol. Court No. 20-00150, Slip Op. 22-101 (CIT August 29, 2022) (*SeAH Steel Judgement*).

<sup>12</sup> *Id.* at 10-11.

<sup>13</sup> *Id.* at 12.

In its decision in *Timken*,<sup>14</sup> as clarified by *Diamond Sawblades*,<sup>15</sup> the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The Court’s August 29, 2022, judgment sustaining the *Redetermination* constitutes a final decision of the Court that is not in harmony with Commerce’s *Final Results*. This notice is published in fulfillment of the publication requirement of *Timken*.

#### Amended Final Results

Because there is now a final court decision, Commerce is amending the *Final Results* with respect to SeAH for the period September 1, 2017, through August 31, 2018. The revised dumping margin is as follows:

<b>Exporter/Producer</b>	<b>Weighted-Average Dumping Margin (percent)</b>
SeAH Steel Corporation	0.00

#### Cash Deposit Requirements

Because SeAH has had a superseding cash deposit rate, *i.e.*, there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rates.

#### Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that were produced and exported by SeAH, and were entered, or withdrawn from warehouse, for consumption during the period September 1, 2017, through August 31, 2018. Liquidation of these entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

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<sup>14</sup> See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

<sup>15</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess ADs on unliquidated entries of subject merchandise produced and exported by SeAH, in accordance with 19 CFR 351.212(b). We will instruct CBP to assess ADs on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis*. Where an importer-specific *ad valorem* assessment rate is zero or *de minimis*,<sup>16</sup> we will instruct CBP to liquidate the appropriate entries without regard to ADs.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516(A)(c) and (e) and 777(i)(1) of the Act.

Dated: September 6, 2022

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Lisa W. Wang  
Assistant Secretary  
for Enforcement and Compliance

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<sup>16</sup> See 19 CFR 351.106(c)(2).